

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

JUDGE PHILIP MARTINEZ

FILED  
2009 AUG 19 PM 3:41  
DEPUTY

MARIA SANCHEZ  
Plaintiff(s)

v.

PORTFOLIO RECOVERY  
ASSOCIATES, LLC;  
and JOHN and/or JANE DOES 1-10  
Defendant(s)

Cause No. \_\_\_\_\_

**EP 09 CV 0305**  
COMPLAINT

**JURISDICTION AND VENUE**

1. Jurisdiction of this Court arises under 28 U.S.C. § 1331 and pursuant to 15 U.S.C. § 1692k(d), and pursuant to 28 U.S.C. § 1367 for pendent state law claims.
2. This action arises out of Defendants' violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. ("FDCPA") and the Texas Debt Collections Practices Act ("TDCPA"), Texas Finance Code Chapter 392.001 et. seq.
3. Venue is proper in this District because the acts and transactions occurred here, Plaintiff resides here, and Defendants transact business here.

**PARTIES**

4. Plaintiff MARIA SANCHEZ (hereinafter "SANCHEZ") is a natural person who resides here in the City of El Paso, County of El Paso, State of Texas, and is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3) and Texas Finance Code 392.001(6).
5. Defendant PORTFOLIO RECOVERY ASSOCIATES, LLC (hereinafter "PORTFOLIO") is a debt buyer and collection agency operating from an address of 120 Corporate Boulevard, Norfolk, Virginia 23502., and is a "debt collector" as that term is defined by 15 U.S.C. § 1692a(6) and Texas Finance Code 392.001(6).
6. Defendant PORTFOLIO regularly uses the mails and telephones to collect consumer debts originally owed to others.
7. Defendants John and/or Jane Does No. 1-10 are employees of PORTFOLIO and are collection agents and are "debt collectors" as that term is defined by 15 U.S.C. § 1692a(6).

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8. The true names and capacities, whether individual, corporate, associate or otherwise of the Defendants sued herein as JOHN and/or JANE DOES 1 through 10, inclusive, are unknown to Plaintiff, who therefore sues such Defendants by such fictitious names. Plaintiff will seek permission from the court to amend this complaint to show the true names and capacities of such Defendants when the same have been ascertained. Plaintiff is informed and believes that each of the Defendants designated as a John or Jane Doe was in some manner responsible for the occurrences and injuries alleged herein.
9. At all times mentioned herein, each of the Defendants was the agent and employee of the other named Defendants, and in doing the things alleged were acting within the course and scope of such agency and employment, and in doing the acts herein alleged were acting with the consent, permission and authorization of the remaining named Defendants. All actions of each of the defendants were ratified and approved by the other named Defendants.

### **FACTUAL ALLEGATIONS**

10. On January 7, 2008 PORTFOLIO sent to SANCHEZ, the letter attached hereto and marked Exhibit A via regular U.S. Mail.
11. PORTFOLIO's letter attempted to collect from SANCHEZ, the sum of \$3,375.95 for a debt SANCHEZ owed to Capital One Bank.
12. PORTFOLIO's letter claimed it was entitled to collect the above referenced sum from SANCHEZ, as PORTFOLIO had purchased the account from Capital One Bank.
13. The debt at issue was incurred by SANCHEZ for personal, family, or household purposes and as such is a consumer debt as defined by 15 U.S.C. 1692a(5) and Texas Finance Code Section 392.101(2).
14. The debt in question was purchased by PORTFOLIO after SANCHEZ had defaulted on said debt and therefore, for the purposes of the Federal Fair Debt Collection Practices Act, PORTFOLIO is not a creditor. See 15 U.S.C. 1692a(4).
15. PORTFOLIO's collection efforts, including sending her at least three more letters and phoning her at least twenty times continued until June 15, 2009 when the undersigned attorney sent to PORTFOLIO the certified letter attached hereto and marked Exhibit B.
16. Exhibit B informs PORTFOLIO of the fact SANCHEZ is represented by counsel with respect to all debts PORTFOLIO was attempting to collect from her and further specifically refers to the account number of the debt in question.
17. Though not necessary under the FDCPA, the letter directs PORTFOLIO to refer all communications to SANCHEZ' attorney.
18. Notwithstanding the fact that PORTFOLIO had actual notice of the fact SANCHEZ was represented by counsel (see Exhibit C attached hereto), PORTFOLIO continued to contact SANCHEZ via telephone and by letter dated July 17, 2009 (see Exhibit D attached hereto).

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19. The conduct of Defendants and each of them in harassing Plaintiff in an effort to collect an alleged consumer debt by communicating with the Plaintiff after the Defendant(s) knew the Plaintiff was represented by counsel; by engaging in conduct, the natural consequence of which is to harass, oppress, or abuse Plaintiff in connection with the collection of a debt; by using unfair or unconscionable means to collect or attempt to collect any debt is violative of numerous and multiple provisions of the FDCPA including, but not limited to, 15 U.S.C. § 1692c(a) (2); 1692d; and 1692f. Further, the acts of Defendants are violative of Texas Finance Code § 392.304 (19).

***Summary***

20. Plaintiff has suffered actual damages as a result of these illegal collection communications in the form of humiliation, anger, anxiety, emotional distress, fear, frustration, embarrassment, amongst other negative emotions.

**CAUSES OF ACTION**

**COUNT I.**

**VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT  
15 U.S.C. § 1692 et seq.**

21. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.
22. The foregoing acts and omissions of each and every Defendant constitutes numerous and multiple violations of the FDCPA including, but not limited to, each and every one of the above-cited provisions of the FDCPA, 15 U.S.C. § 1692 et seq.
23. As a result of each and every one of Defendants' violations of the FDCPA, Plaintiff is entitled to actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in an amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from each and every Defendant herein.

**COUNT II**

**TEXAS FINANCE CODE**

24. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.
25. The foregoing acts and omissions of each and every Defendant constitutes numerous and multiple violations of the Texas Finance Code, including, but not limited to, each and every one of the above-cited provisions of the Texas Finance Code § 392 et seq.

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26. Plaintiff is entitled to recover both statutory and actual damages along with reasonable attorney's fees, and costs.

**TRIAL BY JURY**

27. Plaintiff is entitled to, and hereby respectfully demands, a trial by jury. US Const. amend. 7. Fed.R.Civ.P. 38.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff prays that judgment be entered against each and every Defendant:

- for an award of actual damages pursuant to 15 U.S.C. § 1692k(a)(1) and Texas Finance Code Section 392.403(2) against each and every Defendant.
- for an award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A) against each and every Defendant.
- for an award of costs of litigation and reasonable attorney's fees pursuant to 15 U.S.C. § 1692k(a)(3) and Texas Finance Code section 392.403(b) against each and every Defendant; and
- for such other and further relief as may be just and proper.

Respectfully submitted,



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**SCOTT A. VOGELMEIER**

**Attorney for Plaintiff**

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